

SECOM-D-183

19 August 1981

MEMORANDUM FOR: Acting Director of Central Intelligence

VIA: Director, Intelligence Community Staff

FROM: [redacted]

Acting Chairman

SUBJECT: Proposed Annex B to DCID 1/14: Appeals Procedures

21 AUG 1981

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1. Action Requested: That you sign the attached memorandum for NFIB approving appeals procedures on denial or revocation of Sensitive Compartmented Information (SCI) access approvals as Annex B to DCID 1/14.

2. Background: With strong endorsement by the DCI's General Counsel, the Security Committee proposed an SCI appeals procedure. This was briefed to the NFIC on 24 July 1981. The concept of an appeals procedure was favorably received, but the OSD and military service representatives were concerned that the personal appearance option would impact unfavorably on the Department of Defense. The OSD representative also advocated informing individuals of the specific reasons for and the intent to deny or revoke their access prior to doing so. He recommended including in DCID 1/14 only a general call for appeals procedures with each SIO free to develop and implement them. He followed up his discussion with a memorandum to the DDCI providing additional detail.

3. Discussion: While there appears to be unanimity for an appeals procedure, the form and content need to be resolved.

a. The OSD representative's proposal that each department structure its own procedures is countered by a majority contention that there are both legal and administrative advantages to a uniform procedure for common application in all SCI matters.

There are many issues in intelligence management in which Majority views carry no weight. The key of management issues, as opposed to substantive issues, is whether the DCI and the Security Agency are in agreement.

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b. There is no conflict between the proposed procedure's language on providing an individual with the "basis for denial or revocation" and the OSD proposal to provide "specific reasons" for denial. An agency may elect to satisfy the requirement by providing the specifics of the case without transgressing either the word or intent of the provision.

c. There is considerable concern about the OSD proposal to inform individuals of intent to revoke their accesses prior to doing so; and allowing them to retain access pending completion of the appeals process. Collateral clearance actions are handled this way but not SCI access determinations. To do so for SCI would not appear to be a prudent action consistent with protection of our most sensitive intelligence sources and methods. Nor would it appear needed to satisfy either a legal or a moral need. We strongly urge that this part of the OSD proposal not be favored.

d. In connection with the personal appearance issue, we support the opinion of the DCI's General Counsel and Treasury's NFIC representative that we should include such a provision to avoid risking, possibly in short order, a mandate by the courts to do so in a manner that might be difficult for us. However, this issue is not as critical as the advance notice of intent, and could be excised in the interest of Community consensus on a calculated risk basis.

4. Current Status: Several departments and agencies are experiencing an increase in the number of appeals of SCI access revocations. They see a need to formalize their own appeals procedures or adopt one offered by the DCI. They are aware of the proposal at hand. The majority of the Community SIOs appear willing to incorporate the proposed Annex B in their departmental regulations or to operate in accordance with it. They await a DCI decision. We advocate the issuance of a common appeals procedure as Annex B to DCID 1/14 with or without the option for a personal appearance. The text of the proposed annex, including the personal appearance language, is attached to the draft memorandum for your signature.

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5. Recommendation: That you sign the attached memorandum to NFIB approving the appeals procedures and authorizing their issuance as Annex B to DCID 1/14:

Alternative 1: as written, with the personal appearance option.

Alternative 2: provided the personal appearance option is deleted.



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Attachments

APPROVED: Alternative 1

Acting Director of Central Intelligence

Date

APPROVED: Alternative 2

Acting Director of Central Intelligence

Date

D/ICS
It does not appear that the feasibility
Committee can satisfactorily resolve the
conflicting views. See if you can make an
accommodation with Selsby (DSS/PB+GC) which would
meet the needs of the DCI. I will review the results
& decide on seeking a decision from the DCI on whether to publish
or not.